

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BILLY JOE PAIGE,

Petitioner,

Case No. 18-cv-10837

v.

UNITED STATES DISTRICT COURT JUDGE
GERSHWIN A. DRAIN

JUDGE JOE HALLACY,

Respondent.

**OPINION AND ORDER SUMMARILY DISMISSING PETITION FOR
WRIT OF HABEAS CORPUS AND DENYING CERTIFICATE OF
APPEALABILITY**

I. INTRODUCTION

This is a habeas case under 28 U.S.C. § 2254. Petitioner Billy Joe Paige is a state prisoner in the custody of the Michigan Department of Corrections pursuant to convictions for two counts of first-degree criminal sexual conduct, Mich. Comp. Laws § 750.520b(1)(e), one count of second-degree criminal sexual conduct, Mich. Comp. Laws § 750.520c(1)(e), one count of felonious assault, Mich. Comp. Laws § 750.82, and being a fourth habitual offender, Mich. Comp. Laws § 769.12. The petition fails to raise any claims related to the fact or duration of Paige's confinement. Instead, Paige alleges that he has been denied his right of access to the courts. This claim is not properly raised in a habeas corpus petition. Therefore,

the Court summarily dismisses the petition for writ of habeas corpus under Rule 4, Rules Governing Section 2254 Cases.

II. DISCUSSION

A.

Upon the filing of a habeas corpus petition, the Court must promptly examine the petition to determine “if it plainly appears from the face of the petition and any exhibits annexed to it that the petitioner is not entitled to relief.” Rule 4, Rules Governing Section 2254 cases. If the Court determines that the petitioner is not entitled to relief, the Court shall summarily dismiss the petition. *McFarland v. Scott*, 512 U.S. 849, 856 (1994) (“Federal courts are authorized to dismiss summarily any habeas petition that appears legally insufficient on its face”). The habeas petition does not present grounds upon which habeas relief may be granted and the petition will be dismissed.

B.

After undertaking the preliminary review required by Rule 4, the Court concludes that the petition must be dismissed for failure to state a claim upon which relief may be granted. A petition for a writ of habeas corpus provides the appropriate vehicle for challenging the fact or duration of a prisoner’s confinement. *Preiser v. Rodriguez*, 411 U.S. 475, 486–87 (1973). Paige is not challenging the fact or duration of his confinement, and raises no challenge to his

criminal conviction or sentence. Instead, he alleges interference with his right of access to the courts. Dkt. No. 1, pg. 7–9 (Pg. ID 7–9). Because Paige is not challenging the fact or duration of his confinement, this petition is not properly filed under § 2254.

III. CERTIFICATE OF APPEALABILITY

Federal Rule of Appellate Procedure 22 provides that an appeal may not proceed unless a certificate of appealability (COA) is issued under 28 U.S.C. § 2253. Rule 11 of the Rules Governing Section 2254 Proceedings requires a court to “issue or deny a certificate of appealability when it enters a final order adverse to the applicant.”

A COA may be issued “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The substantial showing threshold is satisfied when a petitioner demonstrates “that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). In this case, the Court concludes that reasonable jurists would not debate the conclusion that the petition does not state a claim upon which habeas relief may be granted. Therefore, the Court denies a certificate of appealability.

IV. CONCLUSION

Accordingly, **IT IS ORDERED** that the petition for a writ of habeas corpus is **DISMISSED**.

IT IS FURTHER ORDERED that a certificate of appealability is **DENIED**.

SO ORDERED.

Dated: April 30, 2018

s/Gershwin A. Drain
HON. GERSHWIN A. DRAIN
United States District Court Judge